



AN ACT PROVIDING REQUIREMENTS FOR MINE AND SMELTER WASTE REMEDIATION PROJECTS; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENTS; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

- (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- (2) "Mine waste" means soil, rock, and other earthen materials excavated from a mine and slimes, tailings, dusts, sludges, or other waste products from the crushing, cleaning, milling, or beneficiation of ores or other mineral-bearing materials, including material that may have migrated from its original place of deposition by erosion or human transit, and that contain hazardous or deleterious substances.
- (3) "Smelter waste" means cinders, clinker, slag, and other waste products from the reduction of ores by any means, including material that may have migrated from its original place of deposition by erosion, and that contain hazardous or deleterious substances.

Section 2. Remediation schedule. Except as provided in [section 7], a person who undertakes a remedial action for the remediation of mine or smelter waste on property owned by someone other than the owner of the waste shall complete the remedial action in accordance with a schedule negotiated between the person completing the remedial action and the property owner and approved by the department.

Section 3. Remediation location. (1) Except as provided in [section 7] and subsection (2) of this section, as part of a remedial action on property owned by another, mine and smelter waste may not be placed or remediated in place at a location within 200 feet of any mine excavation or opening.

- (2) (a) The requirements of subsection (1) may be waived when, after review of an application by a

person undertaking a remedial action, the department finds that the remedial action plan complies with Title 75, chapters 2, 5, and 10, and applicable rules.

(b) The person conducting the remedial action shall reimburse the department for costs incurred by the department under this section.

(c) Reimbursements must be deposited in the environmental rehabilitation and response account provided for in 75-1-110.

(3) The person conducting the remedial action must have the landowner's consent before taking action under this section.

(4) This section does not apply to facilities containing mine or smelter waste that are permitted under Title 82, chapter 4, or that were constructed prior to January 1, 2007.

Section 4. Minimum reclamation standards. (1) Except as provided in [section 7], mine and smelter waste repositories constructed by persons undertaking a remedial action on property owned by another must be capped with a minimum of 24 inches of cover material, including a minimum of 6 inches of topsoil, and revegetated as provided in subsection (3).

(2) Except as agreed to by the person undertaking the remedial action and the property owner or as provided in [section 7], locations where mine or smelter waste has been removed by a person undertaking a remedial action on property owned by someone other than the waste owner must be capped by a minimum of 6 inches of topsoil and revegetated as provided in subsection (3).

(3) Except as provided in [section 7]:

(a) mine and smelter waste repositories or lands where mine or smelter waste has been removed must be revegetated using plant species native to the area; and

(b) revegetated areas must achieve a vegetative cover equal to 85% of the vegetation cover of adjacent lands that were not previously disturbed within 3 years of the initial seeding.

Section 5. Remediation plan. (1) A person undertaking a remediation action for mine or smelter waste on property owned by someone other than the waste owner shall prepare and submit to the property owner a detailed, written plan describing the waste to be remediated and remedial actions to take place on the property.

(2) The property owner has a minimum of 30 days to review the plan. If the remediation is completed

pursuant to 75-10-712 or 75-10-746, the review is not required.

Section 6. Civil penalty. (1) A district court may assess a civil penalty upon a person who violates [sections 1 through 5] of not more than \$1,000 per day.

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil remedy.

(3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner and is payable to the property owner. The action must be filed in the district court of the county where the violation occurred.

Section 7. Mine and smelter waste remediation -- compliance with hazardous waste cleanup orders. [Sections 1 through 6] do not apply to reclamation of an abandoned mine site pursuant to 82-4-371 or to the extent that the actions irreconcilably conflict with an order or plan approval issued by the department pursuant to Title 75, chapter 10, part 7, a corrective action order or permit issued pursuant to Title 75, chapter 10, part 4, or a permit issued for reclamation of a mine site pursuant to Title 82, chapter 4, part 3.

Section 8. Section 75-1-110, MCA, is amended to read:

"75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) reimbursements received pursuant to [section 3];

~~(b)~~(c) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; and

~~(e)~~(d) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 7].

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0593, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 593

INTRODUCED BY VILLA, GALLUS, HINER, SESSO, A. NOONAN, KEANE, MCCLAFFERTY, P. NOONAN,
LASLOVICH

AN ACT PROVIDING REQUIREMENTS FOR MINE AND SMELTER WASTE REMEDIATION PROJECTS;
PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENTS; AMENDING SECTION
75-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.